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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 9873-H4|64|Law.

Dated, Trivandrum, 12th October, 1964.

The following President's Act enacted on the 12th October, 1964, is published for general information.

By order of the Governor,
P. UNNIKRISHNA KURUP,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS,

THE KERALA ABKARI LAWS (AMENDMENT AND VALIDATION) ACT, 1964

No. 1 of 1964

ENACTED BY THE PRESIDENT IN THE FIFTEENTH YEAR OF THE REPUBLIC OF INDIA.

An Act further to amend the Cochin Abkari Act, I *of* 1077, *and the Abkari Act* (*Travancore Act* IV *of* 1073), *and to validate the levy and collection of duty on liquor and intoxicating drugs made under the said Acts.*

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1964 (30 of 1964), the President is pleased to enact as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Abkari Laws (Amendment and Validation) Act, 1964.

(2) This section and sections 23, 24 and 25 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 26th day of January, 1950.

2. *Amendment of section* 3, *Cochin Act.*—In section 3 of the Cochin Abkari Act, I of 1077 (hereinafter referred to as the Cochin Act),—

(i) in sub-clause (iv) of clause (14), the words "intoxicating or" shall be omitted;

(ii) after clause (22), the following clause shall be inserted, namely:—

'(*23*) "rental" means the rental payable under section 18A in consideration of the grant of an exclusive or other privilege of manufacturing, supplying or selling any liquor or intoxicating drugs.'.

3. *Omission of section* 16, *Cochin Act.*—Section 16 of the Cochin Act shall be omitted.

4. *Substitution of new heading for heading "V. DUTIES" in Cochin Act.*—For the heading

"V. DUTIES" before section 17 of the Cochin Act, the following heading shall be substituted, namely:—

"V. DUTIES, TAXES AND RENTALS".

5. *Amendment of section* 17, *Cochin Act.*—In section 17 of the Cochin Act,—

(i) for the opening paragraph beginning with the words "A duty of such amount" and ending with the words "be levied on all liquor and intoxicating drugs", the following shall be substituted, namely:—

"A duty of excise or luxury tax or both shall, if the Government so direct, be levied on all liquor and intoxicating drugs";

(ii) the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—For the purposes of this section and section 18, the expression "duty of excise", with reference to liquor or intoxicating drugs, shall include countervailing duty on such goods manufactured or produced elsewhere in India and brought into the State.'.

6. *Amendment of section* 18, *Cochin Act.*—Section 18 of the Cochin Act shall be renumbered as sub-section (1) thereof and,—

(1) in sub-section (1) as so renumbered,—

(i) for the words "Such duty may be levied in one or more of the following ways", the words "Such duty of excise may be levied" shall be substituted;

(ii) in clause (a), the words "by duty of excise to be charged" shall be omitted;

(iii) in clause (b), the words "by a duty to be rateably charged" shall be omitted;

(iv) clauses (c) and (d) shall be omitted;

(v) in clause (e), for the words "by a tax on each tree from which toddy is drawn", the words "in the form of a tax on each tree from which toddy is drawn" shall be substituted;

(2) after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

"(2) The luxury tax on liquor or intoxicating drugs shall be levied,—

(i) in the case of any liquor, in the form of a fee for licence for the sale of the liquor or in the form of a gallonage fee or vending fee; and

(ii) in the case of an intoxicating drug, in the form of a fee for licence for the sale of the intoxicating drug.

(3) The duty of excise under sub-section (1) and the luxury tax under sub-section (2) shall be levied at such rates as may be fixed by the Government, from time to time, by notification in the Gazette, not exceeding the rates specified below:—

	Maximum rates
(1) *Duty of excise*:—	
(i) Duty of excise on liquors (Indian made).	Rs. 20 per proof litre or Rs. 90.92 per proof gallon.
(ii) Duty of excise on intoxicating drugs.	Re. 1 per gram or Rs. 933.10 per seer.
(iii) Duty of excise in the form of tax on trees tapped for toddy.	Rs. 25 per tree per half-year or part thereof.
(2) *Luxury tax*:—	
(a) when levied in the form of a fee for licence for sale of foreign liquor—	
(i) for licence for sale of foreign liquor in wholesale.	Rs. 5,000 for a year or part thereof.
(ii) for licence for sale of foreign liquor in hotels or restaurants.	Rs. 4,000 for a year or part thereof.
(iii) for licence for sale of medicated wines.	Rs. 1,000 for a year or part thereof.
(iv) for licence for sale of foreign liquor in non-proprietary clubs to members.	Rs. 500 for a year or part thereof.
(v) for special licence for sale of foreign liquor.	Rs. 500 for a year or part thereof.
(b) when levied in the form of gallonage fee.	Rs. 10 per bulk litre or Rs. 45.46 per bulk

Provided that where there is a difference of duty of excise or luxury tax as between two licence periods, such difference may be collected in respect of all stocks of country liquor or intoxicating drugs held by licensees at the close of the former period.".

7. *Insertion of new section* 18A *in Cochin Act.*—After section 18 of the Cochin Act, the following section shall be inserted, namely:—

"18A. *Grant of exclusive or other privilege of manufacture, etc., on payment of rentals.*—(1) It shall be lawful for the Government to grant to any person or persons, on such conditions and for such period as they may deem fit, the exclusive or other privilege—

(i) of manufacturing or supplying by wholesale; or

(ii) of selling by retail; or

(iii) of manufacturing or supplying by wholesale and selling by retail,

any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, negotiation or by any other method as may be determined by the Government, from time to time, and may be collected to the exclusion of, or in addition to, the duty or tax leviahle under sections 17 and 18.

(2) No grantee of any privilege under sub-section (1) shall exercise the same until he has received a licence in that behalf from the Commissioner.

(3) In such cases, if the Government shall by notification so direct, the provisions of section 12 relating to toddy and toddy producing trees shall not apply.".

8. *Amendment of section* 19, *Cochin Act.*—In section 19 of the Cochin Act, for the words "When

9. *Amendment of section 20, Cochin Act.*—In section 20 of the Cochin Act,—

(i) for the words "All or any of the duties", the words "All or any of the duties, tax and rentals" shall be substituted;

(ii) for the words "Farmers of duties under this section", the words "Such farmers" shall be substituted.

10. *Amendment of section 21, Cochin Act.*—In section 21 of the Cochin Act, for the word and figures "section 16", the word, figures and letter "section 18A" shall be substituted.

11. *Amendment of section 26, Cochin Act.*—In section 26 of the Cochin Act,—

(i) in clause (a), for the words "any fee or duty", the words "any fee, duty, tax or rental" shall be substituted;

(ii) in clause (d), for the words "farmer of duties under this Act", the words and figures "farmer under section 20" shall be substituted.

12. *Amendment of section 58, Cochin Act.*—In section 58 of the Cochin Act, for the words "the prescribed duty", the words "the duty, tax or rental payable under this Act" shall be substituted.

13. *Amendment of section 3, Travancore Act.*—In section 3 of the Abkari Act (Travancore Act IV of 1073) (hereinafter referred to as the Travancore Act),—

(i) in clause (11), for the word "includes", the word "means" shall be substituted;

(ii) after clause (18), the following clause shall be inserted, namely:—

'(19) "rental" means the rental payable under section 16A in consideration of the grant of an exclusive or other privilege of manufacturing, supplying or selling any liquor or intoxicating drugs.'.

14. *Omission of section 14, Travancore Act.*—Section 14 of the Travancore Act shall be omitted.

15. *Substitution of new heading for heading "V. DUTIES" in Travancore Act.*—For the heading "V. DUTIES" before section 15 of the Travancore Act,

16. *Amendment of section* 15, *Travancore Act.*—In section 15 of the Travancore Act,—

(i) for the opening paragraph beginning with the words "A duty shall" and ending with the words "be levied on all liquor and intoxicating drugs", the following shall be substituted, namely:—

"A duty of excise or luxury tax or both shall, if the Government so direct, be levied on all liquor and intoxicating drugs";

(ii) the following *Explanation* shall be inserted at the end, namely:—

'*Explanation*.—For the purposes of this section and section 16, the expression "duty of excise", with reference to liquor or intoxicating drugs, shall include countervailing duty on such goods manufactured or produced elsewhere in India and brought into the State.'.

17. *Amendment of section* 16, *Travancore Act.*—Section 16 of the Travancore Act shall be renumbered as sub-section (1) thereof and,—

(1) in sub-section (1) as so renumbered,—

(i) for the words "Such duty may be levied in one or more of the following ways", the words "Such duty of excise may be levied" shall be substituted;

(ii) in clause (a), the words "by duty of excise to be charged" shall be omitted;

(iii) in clause (b), the words "by a duty to be rateably charged" shall be omitted;

(iv) clauses (c) and (d) shall be omitted;

(v) in clause (e), for the words "by a tax on each tree from which toddy is drawn", the words "in the form of a tax on each tree from which toddy is drawn" shall be substituted;

(2) after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

"(2) The luxury tax on liquor or intoxicating drugs shall be levied,—

(i) in the case of any liquor, in the form of

(ii) in the case of an intoxicating drug, in the form of a fee for licence for the sale of the intoxicating drug.

(3) The duty of excise under sub-section (1) and the luxury tax under sub-section (2) shall be levied at such rates as may be fixed by the Government, from time to time, by notification in the Gazette, not exceeding the rates specified below:—

	Maximum rates
(1) *Duty of excise*:—	
(i) Duty of excise on liquors (Indian made).	Rs. 20 per proof litre or Rs. 90.92 per proof gallon.
(ii) Duty of excise on intoxicating drugs.	Re. 1 per gram or Rs. 933.10 per seer.
(iii) Duty of excise in the form of tax on trees tapped for toddy.	Rs. 25 per tree per half-year or part thereof.
(2) Luxury tax:—	
(a) when levied in the form of a fee for licence for sale of foreign liquor—	
(i) for licence for sale of foreign liquor in wholesale.	Rs. 5,000 for a year or part thereof.
(ii) for licence for sale of foreign liquor in hotels or restaurants.	Rs. 4,000 for a year or part thereof.
(iii) for licence for sale of medicated wines.	Rs. 1,000 for a year or part thereof.
(iv) for licence for sale of foreign liquor in non-proprietary clubs to members.	Rs. 500 for a year or part thereof.
(v) for special licence for sale of foreign liquor.	Rs. 500 for a year or part thereof.
(b) when levied in the form of gallonage fee.	Rs. 10 per bulk litre or Rs. 45.46 per bulk gallon.
(c) when levied in the form of vending fee on denatured spirit including methylated spirit.	Re. 1 per bulk litre or Rs. 4.54 per bulk gallon.".

18. *Insertion of new section* 16A *in Travancore Act*.—After section 16 of the Travancore Act, the following section shall be inserted, namely:—

"16A. *Grant of exclusive or other privilege of manufacture, etc., on payment of rentals*.—(1) It

person or persons, on such conditions and for such period as they may deem fit, the exclusive or other privilege—

(i) of manufacturing or supplying by wholesale; or

(ii) of selling by retail; or

(iii) of manufacturing or supplying by wholesale and selling by retail,

any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, negotiation or by any other method as may be determined by the Government, from time to time, and may be collected to the exclusion of, or in addition to, the duty or tax leviable under sections 15 and 16.

(2) No grantee of any privilege under sub-section (1) shall exercise the same until he has received a licence in that behalf from the District Collector.

(3) In such cases, if the Government shall by notification so direct, the provisions of section 10 relating to toddy and toddy producing trees shall not apply.".

19. *Amendment of section* 17, *Travancore Act.*—In section 17 of the Travancore Act,—

(i) for the words "All or any of the duties", the words "All or any of the duties, tax and rentals" shall be substituted;

(ii) for the words "Farmers of duties under this section", the words "Such farmers" shall be substituted.

20. *Amendment of section* 18, *Travancore Act.*—In section 18 of the Travancore Act, for the word and figures "section 14", the word, figures and letter "section 16A" shall be substituted.

21. *Amendment of section* 22, *Travancore Act.*—In section 22 of the Travancore Act,—

(i) in clause (a), for the words "any fee or duty", the words "any fee, duty, tax or rental" shall be substituted;

(ii) in clause (d), for the words "farmer of [illegible]

22. *Amendment of section 54, Travancore Act.*—In section 54 of the Travancore Act, for the words "the prescribed duty", the words "the duty, tax or rental payable under this Act" shall be substituted.

23. *Revival and amendment of Cochin and Travancore Acts in certain areas.*—The Cochin Act and the Travancore Act are hereby revived in the areas where those Acts ceased to be in force by the operation of sub-section (2) of section 6 of the Prohibition Act, 1950 (Travancore-Cochin Act XIII of 1950), and the Cochin Act and Travancore Act so revived shall be deemed to have been amended with effect from the 26th day of January, 1950, in the manner specified in sections 2 to 12 and sections 13 to 22 respectively, and they shall be deemed to have been in force as so amended in those areas, until they ceased to be in force by the operation of sub-section (2) of section 6 of the Prohibition Act aforesaid.

24. *Validation.*—(*1*) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court,—

(i) all duties and taxes levied or collected or purported to have been levied or collected under clauses (a), (b) and (e) of section 18 of the Cochin Act and the rules and notifications made or issued under that Act or clauses (a), (b) and (e) of section 16 of the Travancore Act and the rules and notifications made or issued under that Act, on or after the 26th day of January, 1950, shall be valid and shall be deemed always to have been valid as if such duties and taxes were duties of excise or taxes levied or collected under the Cochin Act or the Travancore Act, as the case may be, as amended by this Act;

(ii) all amounts levied or collected or purported to have been levied or collected as fees for licences for the sale of liquor or intoxicating drugs or as gallonage fee or as vending fee, under the Cochin Act and the rules and notifications made or issued thereunder or the Travancore Act and the rules and notifications made or issued thereunder, on or after the 26th day of January, 1950, shall be valid and shall be

or the Travancore Act, as the case may be, as amended by this Act;

(iii) all payments in consideration of the grant of any exclusive or other privilege under the Cochin Act and the rules and notifications made or issued thereunder or the Travancore Act and the rules and notifications made or issued thereunder shall be valid and shall be deemed always to have been valid as if such payments were rentals payable under section 18A of the Cochin Act or section 16A of the Travancore Act, as the case may be, as amended by this Act, and accordingly,—

(a) no suit or other proceeding shall be maintained or continued in any court for the refund of any such duties, taxes, fees or payments; and

(b) no court shall enforce any decree or order directing the refund of any such duties, taxes, fees or payments.

(2) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court,—

(i) Notification SRO No.323|63|Rev. dated 25th March, 1963, issued under the Cochin Act, shall be valid and shall be deemed always to have been valid as if it were issued under sub-section (3) of section 18 of the said Act as amended by this Act, fixing the rate of luxury tax;

(ii) Notification SRO No. 324|63|Rev. dated 25th March, 1963, issued under the Travancore Act, shall be valid and shall be deemed always to have been valid as if it were issued under sub-section (3) of section 16 of the said Act as amended by this Act, fixing the rate of luxury tax,

and accordingly,—

(a) any person who has obtained a licence for the sale of foreign liquor for the financial year 1963-64 or for the financial year 1964-65 shall be liable and shall be deemed always to have been liable for the amount of fees calculated at the rates specified in the said notifications; and

the said notifications shall be liable to pay to the Excise Commissioner the difference between the amount so calculated and the amount actually paid by him, on or before the 14th day of November, 1964.

25. *Repeal.*—The Abkari Laws (Amendment and Validation) Ordinance, 1964 (Kerala Ordinance No. 2 of 1964), is hereby repealed.

S. RADHAKRISHNAN,
President.

R. C. S. SARKAR,
Secy. to the Govt. of India.

REASONS FOR THE ENACTMENT

The Cochin Abkari Act, I of 1077 and the Abkari Act (Travancore Act IV of 1073), provide for the levy of fees for licences for the manufacture or sale of liquor and intoxicating drugs. Notifications were issued under these Acts fixing such fees, and by Notifications SRO Nos. 323|63 and 324|63 dated 25th March, 1963, the rates of annual fees for licences for foreign liquor were enhanced. The validity of these notifications was challenged before the Kerala High Court. The levy could not be supported as a fee since the amount did not bear a relation to the services rendered. The High Court held that provisions of section 69 of the Cochin Abkari Act read with section 29 thereof, giving power to the Government to amend the Act and levy tax, cannot be exercised after the coming into force of the Constitution. The position in respect of Notification SRO No. 324|63 issued under the (Travancore) Abkari Act is similar.

2. In view of the decision of the High Court referred to above, the notifications issued after 26th January 1950, the date of the commencement of the Constitution, bringing about changes in the rates of duty, gallonage fee, licence fee, etc., also are liable to be struck down as illegal. In that case, the amounts collected by virtue of those notifications in excess of the rates in force before 26th January 1950,

3. An appeal has been filed against the decision of the High Court. But, in view of the far-reaching consequence of the decision, it was considered necessary to enact a legislation for validating such levies and for suitably amending the Cochin Abkari Act and the (Travancore) Abkari Act retrospectively taking power to levy luxury tax instead of fees for licences for sale of liquor and intoxicating drugs and gallonage fees and vending fees in the case of liquors. Since the Legislative Assembly was not in session, the Governor of Kerala promulgated the Abkari Laws (Amendment and Validation) Ordinance, 1964, for the above purpose. Opportunity was also then taken for making certain other amendments which were found necessary in the Acts.

4. The present enactment replaces the Ordinance.

5. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1964 (30 of 1964), has approved the enactment of this measure as a President's Act.

L. P. SINGH,
Secretary to the Govt. of India,
Ministry of Home Affairs.

GOVERNMENT OF KERALA
1964

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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 8967-H3|64|Law.

Dated, Trivandrum, 12th October, 1964.

The following President's Act enacted on the 12th October, 1964, is published for general information.

By order of the Governor,
P. UNNIKRISHNA KURUP,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS,

THE KERALA REVENUE RECOVERY LAWS (AMENDMENT) ACT, 1964

No. 2 of 1964

ENACTED BY THE PRESIDENT IN THE FIFTEENTH YEAR OF THE REPUBLIC OF INDIA.

An Act to amend the Madras Revenue Recovery Act, 1864, as in force in the Malabar area of the State of Kerala and the Travancore-Cochin Revenue Recovery Act, 1951.

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of powers) Act, 1964. (30 of 1964), the President is pleased to enact as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Revenue Recovery Laws (Amendment) Act, 1964.

(2) This section and section 5 shall come into force at once; section 2 shall be deemed to have come into force on the 1st day of November, 1956; and sections 3 and 4 shall be deemed to have come into force on the 22nd day of May, 1951.

2. *Substitution of new section for section 36A of Madras Act II of 1864.*—For section 36A of the Madras Revenue Recovery Act, 1864, as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37 of 1956), the following section shall be substituted, namely:—

"36A. *Postponement of sale and purchase by Government at the subsequent sale.*—(1) When immovable property is put up for sale at the time and place specified in the notice under the second clause of section 36 for the recovery of arrears of public revenue due thereon, if there be no bid, or, if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the officer conducting the sale shall postpone the sale to another date and give notice of the subse-

(2) When the property is put up for sale on the date to which the sale was postponed under sub-section (1), at the time and place specified in the notice, if there be no bid, the officer conducting the sale may purchase the property on account of the Government for any nominal amount, or, if the highest bid be insufficient to cover the arrears of public revenue due on the property and those subsequently accruing up to the date of sale, such officer may purchase the property on account of the Government at the highest amount of bid; and in either case the Government shall acquire the property subject to the provisions of this Act.

(3) The provisions of the first, third and fourth clauses of section 36 shall not apply to cases where immovable property is purchased on account of the Government under this section.".

3. *Insertion of new section 36A in Travancore-Cochin Act VII of 1951.*—After section 36 of the Travancore-Cochin Revenue Recovery Act, 1951 (hereinafter referred to as the Travancore-Cochin Act), the following section shall be inserted, namely:—

"36A. *Postponement of sale and purchase by Government at the subsequent sale.*— (1) When immovable property is put up for sale at the time and place specified in the notice under clause (2) of section 36 for the recovery of arrears of public revenue due thereon, if there be no bid, or, if the highest bid be insufficient to cover the said arrears and those subsequently accuring up to the date of sale, the officer conducting the sale shall postpone the sale to another date and give notice of the subsequent sale as required by clause (2) of section 36.

(2) When the property is put up for sale on the date to which the sale was postponed under sub-section (1), at the time and place specified in the notice, if there be no bid, the officer conducting the sale may purchase the property on account of the Government for any nominal amount, or, if the highest bid be insufficient to cover the [illegible]

up to the date of sale, such officer may purchase the property on account of the Government at the highest amount of bid; and in either case the Government shall acquire the property subject to the provisions of this Act.

(3) The provisions of clauses (3), (4) and (5) of section 36 shall not apply to cases where immovable property is purchased on account of the Government under this section.".

4. *Amendment of section 63, Travancore-Cochin Act.*—To section 63 of the Travancore-Cochin Act, the following proviso shall be added, namely:—

> "Provided that nothing in this section shall be deemed to prohibit an officer of the Government from bidding on behalf of the Government.".

5. *Repeal and saving.*—(1) The Revenue Recovery Laws (Amendment) Ordinance, 1964 (Kerala Ordinance No. 3 of 1964), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Madras Revenue Recovery Act, 1864, as amended by the said Ordinance or the Travancore-Cochin Act as so amended shall be deemed to have been done or taken under the said Acts as amended by this Act, as if this Act were in force on the date on which such thing was done or action was taken.

S. RADHAKRISHNAN,
President.

R. C. S. SARKAR,
Secy. to the Govt. of India.

REASONS FOR THE ENACTMENT

In the judgment reported in A.I.R. 1963 SC. 827, the Supreme Court considered the effect of a purchase on behalf of the Government for a pre-determined nominal amount and observed that such sale cannot

High Court, in O.P. No. 916 of 1963, held that a sale for a pre-determined nominal price of 5 nP. was illegal and void. The practice of buying lands by the Government in revenue sales for a nominal value when the circumstances warrant it, has been in vogue in the State of Kerala for a very long time. The Travancore-Cochin Revenue Recovery Act, 1951, and the Madras Revenue Recovery Act, 1864, which are in force in that State, do not contain any specific provision for this purpose. Under those Acts, all revenue sales should be by public auction. It was, therefore, considered that the Travancore-Cochin Revenue Recovery Act and the Madras Revenue Recovery Act should be amended so as to enable the Government to purchase properties at nominal values where there are no bidders or at the highest bid where the highest bid offered is insufficient to cover the arrears of public revenue due from the defaulter.

2. As this is a matter affecting the collection of arrears of revenue, it was considered necessary to effect the amendments immediately. Since the Legislative Assembly was not in session, the Governor of Kerala promulgated the Revenue Recovery Laws (Amendment) Ordinance, 1964, for the above purpose.

3. The present enactment replaces the Ordinance.

4. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1964 (30 of 1964), has approved the enactment of this measure as a President's Act.

L. P. SINGH,
Secretary to the Govt. of India,
Ministry of Home Affairs.